IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2559 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

MOTI CEREMIC INDUSTRIES

Versus

JIVUBEN RUPABHAI

Appearance:

MR DM Thakkar for PM THAKKAR for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/10/1999

ORAL JUDGEMENT

Learned advocate Mr. Thakkar is appearing for the petitioner Co. Nobody has appeared for the respondent workman, though served. This Court, while admitting this petition on 28th April, 1989, has granted the interim relief subject to the provisions of section 17B of the Industrial Disputes Act, 1947 ("the ID Act"

for short).

Nothing rankles more in the human heart than a brooding sense of injustice when only the rich enjoy the law as a luxury and the poor who need it most, cannot have it because its expenses put it beyond their reach. Threat to the existence of free democracy is not imaginary but real because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.

It was the boast of the Augusts that he found Rome of Bricks and left it of marble. But how much nobler will be our boast, when we shall have to say that we found law dear and left it cheap, found it a sealed book and left it a living letter.

Justice without power is toothless. Power without justice is ruthless. Justice and power must, therefore, be brought together so that whatever is just may be powerful and whatever is powerful may be just.

In the present case, the question has been raised for consideration that whether for getting benefit under section 25F of the ID Act, it is required to have completed 240 days of continuous service by the workman within the period of one year and whether it is not necessary in light of the provisions of section 25B sub clause (1) of the ID Act.

The facts of the present case, in short, are that in all, eight workmen were working with the petitioner Co. since more than 12 years on daily wages with the petitioner Co. and their services were terminated with effect from 1st January, 1983 without issuing any show cause notice or retrenchment compensation and without giving any opportunity of hearing to the respondent workmen and, therefore, the respondent workmen issued notice to the petitioner on 14.1.1983 and the petitioner Co. had not given any reply to it and ultimately the complaint was filed by the workmen on 1st August, 1983 before the Government Labour Officer, Rajkot and, thereafter, said dispute was referred by the Assistant Commissioner of Labour, Rajkot to the Labour Court, Rajkot vide order dated 9th January, 1984 being reference No. 285 of 1984 to 292 of 1984. According to the terms of reference, the demand was to reinstate the workmen with full back wages for intervening period. Before the labour court, the workmen have filed statement of claim and the petitioner co. has filed the written statement.

Separate references were filed for each workmen. According to the petitioner Co. before the labour court, the concerned department was closed and the production was stopped and by letter dated 1.12.1982, they were discharged from service with effect from 1.1.1983 on account of closure of cups and saucers' department from 1st January, 1983. Another contention raised in the written statement was to the effect that the workmen who have not completed 240 days of service are not entitled to any retrenchment compensation and none of the workmen had completed 240 days of service in respective year and the compensation was offered on 31.12.1982 but they refused to accept it. On behalf of the respondent workmen, one Premaben was examined vide Exh. 13 and on behalf of the opponent, one Chhanabhai was examined vide Exh. 36. The labour Court has considered the detail of working days in paragraph 10 of the award and ultimately, the labour court has come to the conclusion that the petitioner co. has violated the provisions of section 25F of the ID Act and, therefore, the termination order is illegal and deserves to be set aside and ultimately, the labour court has granted reinstatement in service with full back wages for the intervening period with effect from lst January, 1983 by award dated 6th January, 1989.

The learned advocate Mr. Thakkar appearing for the petitioner has pointed out that none of the workman had completed 240 days of service in any year and also pointed out that as per section 25B sub clause (2), each workman must complete 240 days in one year and that has not been completed by the workmen and, therefore, the findings and the ultimate conclusion of the labour court is contrary to facts and the said provision and is, therefore, erroneous. Mr. Thakkar, the learned advocate for the petitioner CO. has also pointed out that the workmen has stated before the labour court in paragraph 7 of the deposition that if the petitioner Co. give their legal dues and claims, she is not willing to accept the same but if the company starts the work again, then she claim her right to work in the petitioner company again. Therefore, Mr. Thakkar has pointed out that the workmen has also not proved the unemployment before the labour court and therefore the grant of full back wages is also illegal and contrary to the law.

I have considered the submissions of the learned advocate Mr. Thakkar. In paragraph 10 of the award, the labour court has considered as under :

"10. It is an admitted position that the present workmen were discharged from service with effect from 1.1.83 and they were all workmen on daily wage basis. Exh. 37 shows that Premaben Kunvarji worked for 239, 265, 266, 240, 200, 134, 187 and 124 days in all in each of the year from 1975 to 1982. Similarly, Exh. 38 shows that Lilaben Manga worked for 235, 269, 265, 234, 199, 134, 173 and 130 days in all in each the years from 1975 to 1982. Similarly, Exh.39 shows that Ratan Dungar worked for 153, 148, 70, 138, 183, 144, 206, 156 days in each the year from 1975 to 1982. Similarly, Exh. 40 shows that Jivuben Rupabhai worked for 165, 126, 106, 92, 210, 173, 225 and 124 days in all in each of the years from 1975 to 1982. Similarly, Exh. 41 shows that Kunvarben Mansur worked for 154, 157, 138, 153, 225, 135, 186 and 129 days in all in each of year from 1975 to 1982. Similarly, Exh. 42 goes to show that Puniben Rana worked for 124, 109, 196,156, 222 and 144 days in all in each of the year of from 1977 to 1982. Similarly, Exh. 43 shows that Maniben Najabhai worked for 97, 111, 98, 61, 117,87, 147 and 116 days in all the years from 1975 to 1982. Similarly, Exh. 4 4 shows that Kunvarben Daya worked for 136, 174, 132, 87, 181 and 103 days in all, in each of the year from 1977 to 1982 respectively. "

In said paragraph, the labour court has considered the working days of each of the workmen from 1975 to 1982 and most of the workmen have completed 240 days in number of years and in some of the years, they have not completed 240 days of continuous service. Mr. Thakkar has pointed out that the workmen are entitled to the protection of section 25F of the ID Act provided that they prove that they have work for 240 days within one year and not otherwise and the employer is not duty bound or obliged to offer and pay the retrenchment compensation and notice or notice pay in lieu thereof to the workmen. Said submission of Mr. Thakkar is contrary to the provisions of section 25B of the ID Act which reads as under :

"25-B. Definition of continuous service. - For the purpose of this Chapter,

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not legal, or a lock out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of Cl.(1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred forty days in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

(i) ninety five days in the case of a workman employed below ground in a mine and

(ii) one hundred and twenty days, in any other case."

As per section 25B sub clause (1) thereof, the workmen can be said to be in continuous service for a period if he has, for that period, completed uninterrupted service including the service which may be interrupted on account of sickness or authorized leave or accident or strike which is not illegal or lock out or cessation of work which is not due to any fault on the part of the workmen. Therefore, as per the definition of the term 'continuous service', it is clear that if the workman remain in service continuously but if his service is interrupted because of cessation of work which is not due to the fault on the part of the workman then, the workman must be considered to be in service of the

employer. Here, it was not the case of the petitioner Co. that during the period from 1975 to 1982, the services of the workmen herein was interrupted by the petitioner CO. for some reason and the relationship between the workmen and the employer has come to an end and, therefore, if the workman remained in continuous service and for some days if the employer is not able to provide work to the workman, it cannot be said to be the fault on the part of the workman and hence the said period for which the work was not provided by the employer, then, the workman can be said to have remained in service because his service was not terminated during this period and, therefore, he is deemed to be in service and the relationship of master and servant was continuing between them and, therefore, according to my view, the provisions of section 25B sub clause (1) of the ID Act shall take care of such situation where, if the workman is unable to get 240 days' work in a year but he was not provided work by the employer and he remained in service during this period if his service is not terminated and continued to remain in service excepting the days on which he was not provided the work which amounts to cessation of work which is not due to any fault on the part of the workman. According to my view, in such a situation, the workman must be considered to be in continuous service and then if the workman is satisfying and proved to be in continuous service within the meaning of sub clause (1) of section 25B of the ID Act, then, sub clause (2) thereof is not required to be established by the workman for getting benefit under section 25F of the ID Act. Sub clause (2) of section 25B is an exception of sub clause (1).

The section 25B(2) of the ID Act reads as under:

"where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days in any other

case;
....."

Section 25F of the ID Act reads as under:

"25-F. Conditions precedent to retrenchment of workman.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (for such authority as may be specified by the appropriate Government by notification in the official Gazette]".

The principles of statutory construction are well settled. The words occurring in Statutes of liberal import such as "social welfare legislation and human rights legislation" are not to be put in procrustean beds or shrunks to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. The Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes. In the same manner, Lord Wilberforce, in case of Prenn v. Simonds, [1971 (3) All ER 237], has pointed out that the law is not to be left behind in some island of literal interpretation but is to enquire beyond facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases, namely in case of Surendra Kumar Verma v. Central Government Industrial Tribunal cum Labour Court, it was said by the Hon'ble apex Court that 'semantic luxuries are misplaced in the interpretation of bread and butter statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give

relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.

Section 25 sub clause (1) takes care of uninterrupted service to include the service which may be interrupted on account of sickness, or authorized leave or an accident or strike which has not been declared illegal or lock out or cessation of work which is not due to any fault on the part of the workman but that is an independent clause which neither governs nor controls the immediately succeeding clause namely sub clause (2) of section 25B of the ID Act. Sub clause (2) of section 25B of the ID Act governs the situations where the workman is not in continuous service within the meaning of section 25(1) of the Act. It is laid down in sub clause (a) (i) and (a) (ii) of section 25B that where a workman has not been in uninterrupted service for a period of one year or six months as provided in clause (1) of section 25B, he shall still be deemed to be in continuous service under the employer for a period of one year if during the period of 12 calender months preceding the date with reference to which the calculation is to be made, said workman has actually worked under that employer for not less than 240 days in any other case as per sub section (a)(i). Thus, the conclusion falls that where a workman has not been in continuous service within the meaning of sub clause (1) for the entire period of one year or six months, he shall still be deemed to be in continuous service under the employer for a period of one year or six months as the case may be, if he, during the period of 12 calender months which is preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. There should have been subsisting contract of employment during the entire period as required under section 25 B (1) of the Act. It appears that the thrust of the above propositions is the existence of relationship of master and servant for the period during which the workman remained in continuous service as contemplated under section 25B(1) of the Act. The deeming provisions in section 25B sub clause (2) of the Act by fictionally treating interrupted service under certain conditions also as continuous service was introduced by the legislature apparently to mitigate the hardship of the workman who is made to actually serve under the employer intermittently but actually served or serviced with him for a period of not less than 240 days in the preceding 12 months from the date of termination of his service.

Sub section (1) and (2) of section 25B of the Act

introduced a deeming fiction as to in what circumstances, the workman can be said to be in continuous service for the purpose of Chapter V-A. Sub section (1) provides a deeming fiction that where a workman is in service for certain period, he shall be deemed to be in continuous service for that period even if his service is interrupted on account of sickness or authorized leave or accident or a strike which is not declared illegal or lock out or cessation of work which is not due to any fault on the part of the workman. The situations such as sickness, authorized leave and accident, strike which is not declared illegal, lock out or cessation of work would ipso-facto interrupt the service. These interruptions have to be ignored to treat the workman in uninterrupted service and such service interrupted on account of the aforementioned causes which could be deemed to be uninterrupted would be continuous service for the period for which the workman has been in service. Sub section (2) incorporates another deeming provision for entirely a different situation. It comprehends a situation where a workman is not in continuous service within the meaning of sub section (1) of section 25B of the Act for a period of one year or six months, he shall be deemed to be in continuous service under the employer for a period of one year or six months as the case may be, if the workman during the period of 12 calender months which is preceding the date with reference to which the calculation is to be made has actually worked under that employer for not less than 240 days. Sub section (2) specifically comprehends the situations where the workman is not in continuous service as per the deeming fiction indicated under sub clause (1) of section 25B for a period of one year or six months. In such cases, he is deemed to be in continuous service for a period of one year if the workman satisfies the conditions in sub clause (1) of sub section (2) of section 25B and, therefore, section 25B(1) of the Act says that the workman shall be said to be in continuous service for a period if he has, for that period, put in uninterrupted service including the service which may be interrupted by aforementioned causes. Under section 25B (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year, he shall be deemed to be in continuous service for one year or if the workman during the period of 12 calender months preceding the date with reference to which the calculation is to be made has actually worked under the employer for not less than 240 days. Once the workman is in service of an employer, the employee continuous to be in service until he is dismiss or discharged from service. Where a workman takes part in illegal strike, the workman is in

service of the employer and the fact that he has taken part in illegal strike will not put an end or cause break in his service. Said proposition has been considered by the High Court of Bombay in case of Jayram Sonu Shogale versus New India Rayon Mills Ltd. reported in 1958 (1) LLJ page 28 and it has been held that;

"taking part in illegal strike amounts to misconduct on the part of the employee and for the misconduct an employee invites an order of dismissal but unless the employee is dismissed from service for such misconduct, it is difficult to say how there could be any discontinuity of service so far as the employee is concerned. It would not be correct to contend that when a workman takes part in an illegal strike, continuity of his service comes to an end and he must be deemed to be re-employed after the period of illegal strike for the purpose of determining the quantum of retrenchment compensation. "

Combined reading of section 25B and 25F would make it clear that if a workman establish that he has put in continuous service for not less than one year, he would forthwith be entitled to claim retrenchment compensation for every completed year of service and this would be so notwithstanding the fact that in any particular calender year, he has worked for less than 240 days.

Section 25B defines the term 'continuous service'. It has two parts. In the first part, the continuous uninterrupted service for a period which includes the period of absence or sickness or authorized leave or for a strike which is not illegal or for lock out or for cessation of work which is not due to any fault on the part of the workman but if the absence is for illegal strike, in that event, the service will be considered continuous. Mere participation in an illegal strike did not, by itself, affect the continuous service. So long as the workman's service was not terminated, the workman had continuous service. The cessation of work for no fault on the part of the workman contemplates the situation like lay off, not providing work for number of days, even an illegal strike declared by some extremist and the workman has been physically prevented from entering the premises of the office or the factory, as the case may be. Second part of this section contemplates that if the workman has not continuous service under sub section (2), he shall be in continuous service for a period of one year for which the workman

has worked for a period of 190 days and 240 days in either cases during the period of 12 calender months, prefaced to the date of calculation. Therefore, the second part does not contemplate uninterrupted continuous service but the actual days of work although there may be interruption in the mean time.

This section has replaced the old section 25B and section 2(ee) by the Industrial Disputes (Amendment) Act, 1964 (Act 36 of 1964). It consolidates them in one place with minor additions and alterations. The definition of the expression "continuous service" has prefaced with the words "for the purpose of this chapter" which means that the fact of continuity or interruption of service in terms of this definition has to be limited only for the purpose of this chapter for calculating, quantifying and payment of compensation under the provisions contained in this chapter. Chapter V-A gives certain rights and advantages to the workman who has been in continuous service for a specified period of time. The section further lays down that the services shall be deemed to be continuous inspite of interruption on account of any of the reasons stated therein and to remain uninterrupted. Sub section (1) defines the term 'continuous service' for a period as of uninterrupted service for that period and by fiction includes also services interrupted for an enumerated reasons. Sub section (2) thereof introduced further fiction in calculating the continuous service for a period of one year or six months. Therefore, the workman must have been in service during the period not only on days when he actually worked but also on days when he could not worked under the circumstances set out in sub section (1) of section 25B of the Act. In other words, the workman should be in the employment of the employer concerned not only on the days he has worked but also on the days on which he had not worked either on account of his inability or on account of his being prevented by the employer from working. Furthermore, even if his service during such period is interrupted by any of the reasons set out in the first part or the second part of this section, he shall still be in continuous service for that period. It is obvious that the definition of the expression 'continuous service' in this section is an inclusive definition. In regard to the first part to be continuous, service must be uninterrupted save and except interrupted by the circumstances set out in sub section (1) and the second part takes in the scope of continuous service even the period of service which has been interrupted for the reasons enumerated thereunder. It is also required to be kept in mind that this does not mean that if the service

is interrupted for any other reason than the enumerated reasons, it will ipso facto disturb the contract of service or severe vincalan juris of the relationship employment. In such cases, continuity of service will subsist albit continuity of service for the purposes of this chapter namely calculating, quantifying and payment of compensation is interrupted. In other words, for other purposes, continuous service will not be interrupted even for the interruption is not due to sickness or accident or lock out or leave or on account of illegal strike or is for the fault on the part of the workman. For the purposes other than the purposes of this Chapter, the continuity of service will be interrupted or disturbed only when the employee is retrenched, discharged dismissed or his service is otherwise terminated either in accordance with service regulations or in accordance with the standing orders of the establishment.

In view of the above provisions, it is clear that sub section (1) of section 25B of the Act provides that the workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service. Continuous service would be interrupted only by two modes and that is by workman leaving the employment or employer terminating his service by dismissal or discharge. Mere absence of the workman without obtaining prior leave for a days would not put an end to the continuous service of a workman. Sub section (2) opens with the words "where a workman is in continuous service within the meaning of sub clause (1)" and these words unmistakably indicate that the legislature has desire and intention to cover the cause even of those workmen who were not in continuous service for the purpose of retrenchment. Mere fact that the workman had not worked for 240 days in some year/s during his long employment would not debar him from claiming entire amount of retrenchment compensation as provided under section 25F of the ID Act. Mere fact that during some years in his long period, the workmen had not worked for 240 days is not an answer to deprive him of the retrenchment compensation by ignoring the entire period. Once it is proved and/or found that the workman is in continuous service, then, it is wholly immaterial whether he has worked for particular number of days in a particular year. The contingency which demands the worker to work for a period of 240 days as provided by sub sec. (2) of sec. 25B of the Act would come into play provided the workman is not in continuous service as required under section 25B of the Act.

Both, on principles and on precedent, it must be held that section 25B(2) provides a situation where the workman is not in employment for a period of 12 calender months but has rendered service for a period of 240 days within the period of 12 calender months and commencing and counting the back ward from the date of retrenchment, if he has, he would be deemed to be in service for the purpose of sec. 25B and Chapter V-A and once it is found that the workman is in continuous service under section25B(1) of the Act and the workman is satisfying the conditions and contingency mentioned in the said sub section (1), then, it is wholly immaterial whether he has worked for a particular number of days in a particular year. Contingency which demands the worker to work for a period of 240 days as provided by sub section (2) of section 25B would come into play provided the workman is not in continuous service as required under sub section 25B (1) of the ID Act.

After considering the above provisions and the interpretation of section 25B (1) as also (2) of the ID Act, I have also considered the decision of the apex Court reported in AIR 1986 SC page 458 in the case of Workmen of American Express International Banking Corporation versus Management of American Express International Banking Corporation. In the said decision, the apex Court has interpreted the provisions of sub section (2) of section 25B of the ID Act and has also interpreted the actual working days of calculation including Sundays and other paid holidays can be taken into account. While interpreting sub section (1) read with sub section (2) of section 25B of the ID Act, I have also taken into consideration the observations made by the apex court in paragraph 4 of the said decision which are as under:

"4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and Human Rights' legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislation, the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more

> concerned with the 'colour', the content and the 'context' of such statutes. (We have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmounds, 1971 (3) All ER 2371. In the same opinion, Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic consideration. In one of the cases cited before us, that is, Surendra Kumar v. Central Government Industrial Tribunal cum Labour Court, we had occasion to say, "Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

In a number of existing industrial establishment, both public and private, it has become a common tradition for employers to exploit the workmen on trivial grounds and thereby to adopt all sorts of unfair labour practices to terminate the services of such workman in the name of retrenchment and disciplinary action. Such victimized workmen are also mercilessly denied of their benefits for which they are otherwise entitled to inspite of existence of several constitutional and statutory safe guards for the protection of industrial workmen, there have been many of such cases where they are exploited. But the courts have been putting very much interest to do the socio economic justice with such victims and to protect their rights and interests. It is also required to be appreciated that the courts are creating new approaches for giving meaningful interpretation to the statutory provisions where the workman is claiming for the protection and benefits for which they are legally entitled to. It is also the anxiety of the court for strong and determined smooth exercise of legal wisdom to protect the interest of the workman to the possible extent within the frame work of statutory provisions. It is also required to have new approach to provide social justice to the victimized workman and to protect their interest against the evil practices of the employer. Therefore, it is necessary to have humanitarian approach while applying liberal construction to bring out exact meaning of the relevant statutory provisions which remove

the injustice done to the industrial workmen by termination and the employer's denial to pay benefits to such workman for which they are legally entitled to under section 25F of the ID Act on the ground that the workmen did not have continuous service of 240 days as contemplated under section 25B of the ID Act.

Therefore, according to my view, if the workman is satisfying sub clause (1) of section 25B of the ID Act, then, it is not necessary for the workman to satisfy the deeming provision which has been made under sub clause (2) of section 25B of the ID Act. Therefore, considering these provisions of section 25B of the ID Act, upon conjoint reading of section 25B with section 25F of the ID Act, it becomes clear that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer unless the employer has to satisfy condition precedent mentioned in sub clause (a) to (c) of section 25F of the ID Act.

Therefore, considering the provisions of section 25F of the ID Act, which are the conditions precedent to retrenchment of workman, it is clear that it is not stated in those provisions that 240 days' continuous service is must for getting benefit of section 25F of the ID Act. On the contrary, it has been provided that no workman employed in any industry who has been in continuous service for not less than one year under under an employer shall be retrenched by that employer until the conditions precedent for retrenchment as provided under sub clause (a) to (c) of section 25B of the ID Act are satisfied. This would mean that for getting benefit of protection of section 25F of the ID Act, the workman is required to have completed not less than one year continuous service. Therefore, joint reading of section 25B (1) and (2) with section 25F of the ID Act makes it clear that in each and every case of retrenchment, it is not necessary for the workman to prove before the labour court that he has completed 240 days of continuous service within 12 calendar months preceding the date with reference to which the calculation is to be made. If the workman is able to satisfy that he remained in continuous service with the employer for more than one year and his service is not interrupted by the employer during this period and his service has been interrupted only because of the cessation of work which is not due to the fault on the part of the workman, and other causes as mentioned under sub section (1) of section 25B, then, he is

required to be considered to have remained in continuous service and such consideration of his being in 'continuous service' would entitle such workman to have the protection as provided under section 25F of the ID Act under which the conditions precedent to retrenchment of a workman have been provided. Thus, considering this fact, if the workman has completed and remained in service for more than one year and he will not be able to get work for more than 240 days in one year which is not interrupted on account cessation of work which is not due to any fault on his part, then, he is certainly entitled to the benefit of sec. 25F of the Act and, therefore, according to my view, though the respondents workmen have not completed 240 days' work in some years since it is not the case of the company that such interruption in service was due to any fault on the part of the workmen. Therefore, according to my view, the workmen are entitled to the protection of section 25F of the ID Act and this aspect has been considered by the labour court in its award in paragraph 13, 14 of the award and, therefore, the contention raised by Mr. Thakkar in this regard cannot be accepted.

The next contention raised by Mr. Thakkar that the respondents workmen have not proved unemployment before the labour court is also not correct because in paragraph 5 of the impugned award, the workman has deposed before the labour court that after she was discharged from service by the petitioner company, she tried to get work elsewhere but she did not get any work. This assertion made by the workmen in her oral evidence has not been controverted by the petitioner company by producing any evidence contrary thereto by proving gainful employment of any of the workmen and, therefore, according to my view, the labour court has rightly passed the order of full back wages and the same does not call for any interference in absence of gainful employment at the hands of this court in exercise of the extra ordinary powers under Article 226 and/or 227 of the Constitution. It is also required to be noted that the witness of the petitioner co. Chhanabhai has admitted in his cross examination that the present workmen were not paid their legitimate dues of retrenchment compensation when they were discharged from service and has also admitted one aspect that the factory is still working. In is evidence, the witness Chhanabhai has admitted that the present workmen were working on daily basis and they were paid according to the Minimum Wages Act. So, according to the admission of the witness of the petitioner Co., the factory has continued its work and it was not closed

as submitted by Mr. Thakkar. Considering all these aspects of the matter, the contention raised by Mr.Thakkar cannot be accepted.

No infirmity has been pointed out in the award of the labour court. The impugned award is in conformity with the settled principles of law laid down by the Hon'ble Supreme Court in various decisions. Some such decisions of this Court are reported in 1994(1) GLR 579; 1998(1) GLR 110; 1985 (2) GLR 1040; 1993 (1) GLH 17.

Therefore, in light of these facts and circumstances of the case, I am of the view that there is no infirmity in the impugned award of the labour court. The labour court has not committed any error much less an error apparent on the face of the record while passing the award in group of reference no. 285 to 292 of 1984 and, therefore, the present petition is required to be dismissed.

Accordingly, this petition is dismissed. Rule is discharged. Interim relief shall stand vacated. There shall be no order as to costs.

Since I am rejecting the present petition and vacating the interim relief, it would be just and proper to direct the petitioner Co. to implement the impugned judgment and award of the labour court within some reasonable period. Accordingly, the petitioner Co. is directed to implement the impugned judgment and award of the labour court as per the direction of the labour court. The petitioner Co. is accordingly directed reinstate the respondents workmen and to pay them full back wages of the intervening period from the date of termination till the date of reinstatement within three months from the date of receipt of certified copy of this order. In this petition, interim relief against the implementation and execution of the award was granted subject to compliance of sec.17B of the ID Act. Therefore, it would be open for the petitioner Co. to adjust the amount which it has been paid by it to the respondents workmen in compliance of section 17B.

29.10.1999. (H.K.Rathod,J.)

Vyas